Decision 01-07-028 July 12, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Proposed Policies and Programs Governing Energy Efficiency, Low-Income Assistance, Renewable Energy and Research Development and Demonstration.	Rulemaking 98-07-037 (Filed July 23, 1998)

INTERIM OPINION

1. Summary

This decision addresses recovery of costs adopted in Decision (D.) 01-03-073. We modify D.01-03-073 to establish a balancing account rather than a memorandum account to provide recovery of the costs incurred to implement our decision. In addition, to the extent that current revenues from ratepayers are insufficient to fully recover these costs, any unrecovered costs can be collected post-rate freeze.

2. Background

D.01-03-073 implemented Assembly Bill (AB) 970 which directed the Commission to initiate certain utility-performed load control and distributed generation programs within 180 days of enactment. The decision directs the utilities to fund two new load control and self-generation programs at an annual cost of $138 million per year, for four years – a total expenditure of $550 million. Pacific Gas and Electric Company (PG&E) estimates its share is $63 million with approximately $55 million allocated to the electric revenue requirement. In D.01-03-073, the Commission directed the utilities to increase their distribution revenue requirements, without modifying current rates, to reflect the authorized budgets, and track program costs in memorandum accounts.

On April 27, 2001, PG&E filed and served an emergency petition for modification of D.01-03-073[1]. PG&E seeks an immediate, ongoing source of funds for programs adopted in D.01-03-073 through either an additional surcharge to current rates, or an offset to revenues collected by PG&E on behalf of the California Department of Water Resources (DWR).

PG&E also asserts that it is a Chapter 11, "debtor in possession" under the United States Bankruptcy Code. In this petition, PG&E states that it cannot incur new unfunded program costs without detrimentally affecting creditors and other interest holders, and without impairing its prospects for a successful reorganization. As such, PG&E says it is constrained from implementing new programs without concurrent receipt of funds. Thus, it filed this emergency petition for modification.

Further, PG&E asks to clarify that these costs are not subject to any prohibition on cost recovery after the end of the rate freeze, such as the prohibition PG&E believes was established in D.99-10-057 (the post-transition electric ratemaking), and affirmed in D.00-03-058.

Southern California Edison Company (SCE) filed comments on the emergency petition on May 15, 2001. SCE refers to a joint application for rehearing filed by PG&E, SCE, and San Diego Gas and Electric Company (SDG&E).[2] SCE states its support for PG&E in requesting modification of D.01-03-073 such that post rate freeze recovery will not be barred by D.99-10-057, D.00-03-058, or related decisions.

3. Discussion

As we discussed in D.01-03-073, the costs required to implement the adopted special programs are recoverable as distribution revenue requirements. This approach is

[1] Recently, SCE filed a petition for modification by SCE in this proceeding, but on a different matter. Today's decision does not address or dispose of SCE's petition for modification.

[2] We note that today's decision in no way is intended to prejudge the disposition of this joint application for rehearing.

consistent with AB 970 as adopted by D.01-03-073. That decision directs the utilities to initiate certain utility-performed load control and distributed generation programs within 180 days of enactment.

In its emergency petition PG&E sought a source of funding to implement these special programs. Specifically, PG&E sought to recover costs for the programs from either a surcharge to current rates or through an offset to revenues collected by PG&E on behalf of the CDWR[3]. Additionally, PG&E sought clarification to the effect that the funding mechanisms established by the Commission for these programs would not be subject to the prohibition against post-rate freeze cost recovery[4].

We are not persuaded to modify D.01-03-073 in the manner requested by PG&E, for the reasons set forth below. Instead, we will change the memorandum account to a balancing account so that the costs associated to implement these conservation programs would be recoverable as consonant with the statutory language in AB 1890. Also, we will clarify D.01-03-073 with respect to the recovery of costs after the rate freeze has ended, for the reasons stated below.

Upon further consideration of AB 970 and the mandates of AB 1890, we find that recovery for the costs of these very specific statutorily mandated conservation programs adopted in D.01-03-073 are recoverable after the end of the rate freeze and not subject to the constraints of the electric industry restructuring rate freeze. We find this to be a reasonable interpretation of the statute, and not inconsistent with the mandates of AB 1890, as we discuss below.

[3] PG&E Emergency Petition for Modification of Decision (D.) 01-03-073, page 3.

[4] id. The prohibition on post-rate freeze recovery is discussed in D. 99-10-057 (the post-transition electric ratemaking, or "PTER" decision). Rehearing denied in relevant part in D.00-03-058 (March 16, 2000), Petition for Writ of Review, First Appellate Division A.090780 (April 17, 2000), Court of Appeal Summary Denial S091687 (September 6, 2000), Petition for Review Cal. Supreme Court denied (November 21, 2000).

As a response to the severe dysfunction in the electrical industry the Legislature has acted in order to mitigate the effects of the crisis. AB 970, in part, directs the Commission to identify and undertake actions to adopt specific energy conservation initiatives. AB 970 adds Section 399.15 to the Public Utilities Code which provides in relevant part that the costs associated with implementing conservation programs shall be recoverable in the utility corporations' distribution revenue requirements.

We observe that these special programs were neither contemplated nor anticipated by the Legislature when it adopted the rate freeze in AB 1890. These programs are a necessary response to the energy crisis confronting California ratepayers. Thus, we find no conflict between the uneconomic generation costs not recoverable in the post-rate freeze period as contemplated in AB 1890, and these special, limited costs associated with reducing load demand and increasing conservation. Because these programs are designed to drive down the costs to customers i.e., lowering customers' bills by reducing the demand for electricity, we agree that they are recoverable currently and not subject to the same rate freeze constraints as are the costs actually considered at the time AB 1890 was adopted.

PG&E is authorized to establish a Demand Responsiveness and Self-Generation Program Incremental Cost Balancing Account (DRSGPIC) in their preliminary Statement. This account shall record the amounts that were previously authorized for the memorandum account.[5] That is, PG&E shall record monthly costs above the funds authorized in current rates (i.e., incremental costs) of administering any program, activity, study, or report (e.g., separately track costs and revenues from the new demand responsiveness programs, self-generation program and each report).

This account balance will be reviewed and the reasonable costs amortized in rates in a subsequent period. We will direct PG&E to transfer the balances in the DRSGPIC to their Transition Revenue Account (TRA) monthly. These costs are recoverable, as we

[5] D.01-03-073, Ordering Paragraph 2.

are persuaded that the companies cannot defer recovery. It is in the TRA that PG&E should recover their authorized distribution revenue requirements for non-energy items before determining the residual available for stranded cost recovery in their Transitional Cost Balancing Account (TCBA). PG&E shall reflect this modification in their TRA tariff. This treatment assures recovery of these costs ahead of their stranded costs.

The adopted balancing account approach provides cost recovery. Just as with any balancing account, however, entries are subject to later reasonableness review. For consistency, we intend that this balancing account approved be applicable to all respondent utilities to this ratemaking, and not just to PG&E that filed the petition for modification. Thus, we authorize all utilities to establish a DRSGPIC in the manner specified in this decision, and as applicable.

We decline to add a surcharge as requested by PG&E in its petition for modification. A surcharge is unnecessary since we have determined that the reasonable costs for these specific programs incurred during the rate freeze may be recoverable after the end of the rate freeze

We also decline to adopt PG&E's alternative recommendation to authorize utilities to withhold funding for these programs from revenues collected on behalf of DWR. PG&E's proposed language to implement this suggestion is that the Commission "instruct utilities to work with DWR to develop the details of this proposal as an alternative to a surcharge." This proposal is not sufficiently developed to adopt. Rather, the method we adopt herein provides the utilities with an opportunity to recover reasonable costs, and needs no further development.

4. Need for Expedited Consideration

Rule 77.7(f)(9) of the Commission's Rules of Practice and Procedure provides in relevant part that:

> "...the Commission may reduce or waive the period for public comment under this rule...for a decision where the Commission determines, on the motion of the party or on its own motion, that public necessity requires reduction or waiver of the 30-day period for public review and comment. For purposes of this subsection, "public necessity" refers to circumstances

> in which the public interest in the Commission adopting a decision before expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day period for review and comment. "Public necessity" includes, without limitation, circumstances where failure to adopt a decision before expiration of the 30-day review and comment period...would cause significant harm to public health or welfare. When acting pursuant to this subsection, the Commission will provide such reduced period for public review and comment as is consistent with the public necessity requiring reduction or waiver."

PG&E asked that the Commission rule on its petition no later than May 3, 2001.

We balance the public interest in quickly modifying D.01-03-073 against the public interest in having a full 30-day comment cycle on the proposed amendment. We conclude that the former outweighs the latter. We must respond quickly to provide additional assurance (beyond that already provided by the memorandum accounts initially adopted in D.01-03-073) of cost recovery so that respondent utilities may successfully implement the orders in D.01-03-073. Therefore, we reduce the period for public comment on this decision.

We issue today's order based on the emergency petition, responses to the petition, plus comments on the Draft Decision. With service of the Draft Decision, we requested any parties who believed evidentiary hearings were necessary, to request such hearings in the comments they would be filing. Parties were required to identify the exact alleged factual issue in dispute, show that it is material and relevant, and state what evidence would be offered at hearing.

Comments to the draft decision were submitted by the Center for Energy Efficiency and Renewable Technologies (CEERT), PG&E, and SCE.

CEERT requests that the Commission require immediate implementation of the programs adopted in D.01-03-073 and resolve the cost accounting and recovery issues at a future date. As justification, CEERT points out that the substantial public benefits associated with these programs may be lost or unnecessarily deferred due to disputes over cost accounting and recovery.

SCE requests that the Commission either grants PG&E's emergency petition to modify in its entirety or otherwise assure utility cost recovery by treating the program costs as restructuring-related implementation costs. SCE believes that immediate and concurrent full cost recovery is necessary to implement the new load control and distributed generation incentive programs. Additionally, SCE states that the costs and revenues recorded in the DRSGPIC should not be mixed with the TRA or TCBA accounts as they would likely preclude a realistic opportunity for recovery.

PG&E requests that the Commission modify the Draft Decision to provide for recovery of the costs associated with implementing the programs adopted in D.01-03-073 by either increasing revenues through increasing rates, or decreasing costs through an offset of the money collected by PG&E on behalf of the CDWR. As justification, PG&E states that the Draft Decision does not provide assurances of cost recovery.

Findings of Fact

1. A balancing account for recovery of incremental costs incurred by respondent utilities implementing orders pursuant to D.01-03-073 provides current cost recovery.

2. Incremental costs incurred by respondent utilities to implement orders adopted in D.01-03-073 are part of each utility's distribution revenue requirement.

3. The surcharge adopted in D.01-03-082 was instituted under emergency circumstances.

Conclusions of Law

1. A balancing account should be used to record incremental costs incurred to implement programs adopted in D.01-03-073.

2. The Legislature has not authorized an additional charge, above current electric rate freeze levels, to recover the costs of § 399.15(b) programs.

3. Section 399.15 provides that the costs associated with implementing conservation programs shall be recoverable in the utility corporations' distribution revenue requirements.

4. These programs were neither contemplated nor anticipated by the Legislature when it adopted the rate freeze in AB 1890. These programs are a necessary response to

the energy crisis confronting California ratepayers. Thus, we find no conflict between the costs not recoverable in the post-rate freeze period as contemplated in AB 1890, and these special, limited costs associated with reducing load demand and increasing conservation.

5. Because these programs are designed to drive down the costs to customers i.e., lowering customers' bills by reducing the demand for electricity, and were not included in the rates frozen as of June 10, 1996, it is reasonable that the program costs are recoverable currently and not subject to the same rate freeze constraints as are the costs actually considered at the time AB 1890 was adopted.

6. As determined in D.01-03-082, the rate freeze has not ended.

7. PG&E and SCE should transfer the balances in the DRSGPIC to their TRA monthly. These costs are recoverable now as current costs, and we are persuaded that the companies cannot defer recovery.

8. The utilities should proceed with today's authorized programs without further delay. Each utility should establish balancing accounts to track all program costs. As discussed in this decision, the utilities should also track all program costs and benefits by customer class.

9. The public interest in quickly amending D.01-03-073 so that cost recovery can be clarified for Summer 2001 outweighs the public interest in a full 30-day public review and comment of the draft decision. The period for public review and comment on the draft decision should be reduced.

10. This order should be effective today so that the load control programs adopted in D.01-03-073 can be implemented immediately.

11. For purposes of consistency, this interim decision applies to all respondent utilities.

INTERIM ORDER

IT IS ORDERED that:

1. The April 27, 2001 emergency petition for modification of Decision (D.) 01-03-073 filed by Pacific Gas & Electric Company is granted to the extent provided herein, and denied in all other respects.

2. D.01-03-073 is modified as follows:

   a. Conclusions of Law No. 3 is replaced with:

   > "3. The utilities should proceed with today's authorized program without further delay. Each respondent utility should establish a balancing account to track all program costs. As discussed in this decision, the utilities should also track all program costs and benefits by customer class."

   b. The last sentence of Ordering Paragraph 2 is replaced with:

   > "2. Each respondent utility shall establish a Demand Reduction and Self Generation Program Incremental Cost Balancing Account (DRSGPIC) to track program costs. The utilities shall also track all program costs and benefits by customer class. PG&E and SCE shall transfer the balances in the DRSGPIC to their Transition Revenue Account (TRA) monthly. To the extent such programs remain in place after the rate freeze ends, the costs of these programs shall be recoverable after the rate freeze.

3. Within five days of the date of this order, respondent utilities shall file and serve an advice letter with revised tariffs. The advice letters with revised tariffs shall implement the directions in this order, including amending each utility's Preliminary Statement to create demand responsiveness and self-generation accounts. Each advice letter with tariffs shall be in compliance with General Order 96-A. The advice letters and tariffs shall become effective five days after filing, unless suspended by the Energy Division Director. The Energy Division Director may require a respondent utility to amend its advice letter and tariffs to comply with the orders herein, and may require a respondent utility to file and serve individual advice letter and tariffs as needed to separately implement portions of today's order.

This order is effective today.

Dated July 12, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I dissent.

/s/ HENRY M. DUQUE
Commissioner

I will file a dissent.

/s/ RICHARD BILAS
Commissioner

R.98-07-037
D.01-07-028

Commissioner Bilas, dissenting:

Although I want to see these programs go forward, I am opposed to this decision on principle for two reasons. First, I received this substantially revised proposed decision this morning. There has been no opportunity for comment on it by parties nor any meaningful review by Commissioners. While my office was apprised earlier of the bottom line approach the decision would propose, the devil is in the details, and this decision contains lots of them. The actual proposed decision came this morning along with two other substantially revised decisions and a resolution with massive unmarked revisions that was thereafter revised. Review of proposed decisions and resolutions under such circumstances cannot be meaningful for a Commissioner. A prior brief synopsis on the broad approach to be taken is not sufficient information upon which to base a vote on a decision either. Sadly, this course of decisionmaking is becoming the rule rather than the exception here. The newly distributed, proposed decision substantially revised the prior proposed decision and set forth a new scenario for a balancing account and recovery of program expenses extending after the rate freeze is over. Not only does this revise a prior Commission post transition policy, but there has been no comment on whether this new scenario is a workable scenario. The Commission should have had the benefit of comment on this new approach in order to ensure it will, in fact, resolve the funding concerns keeping these vital programs from moving forward. I have no idea whether it really will.

Second, and most importantly, I disagree with the majority's conclusion that the rate freeze is not over, and therefore we cannot institute a surcharge for these programs. This rationale totally ignores the two prior surcharges assessed by this Commission. It also ignores the Department of Water Resources as a funding source from the revenues it will receive under prior Commission decisions. It also totally ignores reality. Common sense and our audits of the utilities make it abundantly clear that in reality the rate freeze is over, in fact was over long ago. If this Commission does not soon place a decision declaring the rate freeze to be over on its agenda, I will sponsor one.

Therefore, I respectfully dissent.

/s/ RICHARD A. BILAS
RICHARD A. BILAS
Commissioner

San Francisco, California
July 12, 2001